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Letter submitted by e-mail to consultation-2014-09@iosco.org

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Comment may be made publicly available.

Ms. Rohini Tendulkar
IOSCO General Secretariat
IOSCO
Calle Oquendo 12
28006 Madrid
Spain

6 January 2015

Dear Ms. Tendulkar,

The firm of Thomas Murray wishes to thank IOSCO for the opportunity to comment on the current questions before its task force on cross-border regulation. This is critically important work for the world's inter-connected public capital markets. IOSCO is to be complimented for the clarity of its consultation report, and its avoidance of jargon.

Trying to figure out compliance with changing global and national regulation is an extraordinarily complex task for this firm as it assesses most of the world's market infrastructure institutions. The degree of complexity is such that we are certain to be missing pieces of the puzzle. Also, as our work moves across jurisdictions, it is not clear how the pieces of the puzzle fit together. We believe that as this IOSCO task force advances in setting out the questions, that alone will provide welcome clarity. Yet we expect IOSCO will get further than that.

This firm believes that once a broad, common policy framework that suits the regulatory community can be established, it will be up to private sector actors to adapt their commercial offer to it. It must not be

the other way around. The firm endorses the value of the regulated environment. When the test came in 2007-2009, the regulated portions of the world's capital markets worked best.

The main qualification to this endorsement comes from the recognition of political interference in the post-2008 legal clean-up of a financial system that had in good part run off course; much of that politicised discourse and many of those actions blurred the picture of regulated markets as from 2008, without, in our view, actually reducing risk as much as should have been the case. Perhaps that was understandable given the massive damage to much of the world's economy. That was then.

Today, the work of this task force can in good part redress matters by setting out the thoughts of the world's regulatory agencies, the parties directly responsible for overseeing capital markets. We would be especially keen for them to focus on the relative successes of regulation in marketplaces that suffered least in 2007-2009: surely there are practical lessons to be learned from them.

Moreover, we would welcome yet more forceful messages from IOSCO on global regulatory reform generally, including on the matter of jurisdictional conflict – in our view, the regulators must use the authority of their offices to explain to the public, and notably the politicians, what is complex and confusing and must therefore be simplified or discarded; and to state what might be needed to provide simplicity and coherence. IOSCO and its members are never more legitimate than when explaining in plain terms the kinds of supervisory tools and means required to fulfil their mandates, and what might be impeding the fulfilment of those mandates.

This letter is written with consideration to market infrastructures, the core subject of our business.

The firm

Thomas Murray is a private firm registered in the United Kingdom, and founded 21 years ago. It is owned by 90 individual investors; there is no institutional tie of any kind, assuring the independence of viewpoint that is essential for credible analytical and advisory services.

Uniquely, the firm's business is devoted solely to capital markets infrastructure institutions, and its analyses cover 430+ such establishments in more than 100 marketplaces. 75 persons work for the firm, and we endeavour to provide current, detailed information to our clients. The question which led to the founding of Thomas Murray was global custody, and from there the business coverage spread by geography and line of business. Today the firm's analytical coverage includes central securities depositories, custodians (global, national, and sub-custodian), settlement houses, and registrars, as well as clearing houses.

Thomas Murray's CCP assessment programme has led to a considerable deepening of the firm's expertise on the subject of clearing, notably at a time when OTC contracts were being directed into this space and utterly upsetting the previous ways of working.

Thomas Murray believes that its extensive knowledge of financial markets infrastructure institutions may give weight to the comments which follow.

Comments

We live and work in a world of nation-states: there is inherent friction between what is deemed to be global and what in the end remains national. In this regard, the decades-long, steady push forward by IOSCO to bring more capital markets regulation up to a commonly understood, higher global standard must be judged a great success. The work of this task force demonstrates, however, that there is much more to be done, as we have all sensed.

When we look at the challenges the regulators have identified (section 7.1), we believe that the IOSCO community has stated the questions as we understand them to be, too. From the perspective of our work with infrastructures, the critical points are:

-"Similar regulatory outcome." We understand the concept and objective. But when this was first put forward to the public, we thought the idea was too political and impractical to be applied. The culture, law, and practices of the world's capital markets are too diverse to begin to think of anything approaching line-by-line comparisons, or anything but the broadest of estimations. We have never believed that a fair, valid assessment could be made, however honest the effort. This concept has caused considerable confusion for our clients. We also fear that going in this direction may have brought some discredit to the authorities involved.

- Limitations on regulatory coordination. Perhaps it would be preferable for the world's regulators to agree to a certain number of broadly sketched preferences as to their objectives, no more than five or six such topics, and a multi-year timetable for implementation and enforcement that IOSCO members could commit to. If the public had this sense of direction, much needed reform would be more successfully put in place. This type of coordination would give coherence and enhance the legitimacy of what must yet be achieved.

- Reliance on fellow regulators. This strikes us as the most practicable way forward in a world where national sovereignty matters. We believe that, in the end, the member commissions of IOSCO will have to trust one another's commitment to common global principles, and that one cannot go further into details that simply work differently in law and practice from one country to another. The IOSCO Multi-Lateral Memorandum of Understanding should ease the way, as do mechanisms of investigation in place across frontiers, as well as well-established redress before arbitration tribunals.

Equally, the firm strongly believes that private sector actors crossing boundaries in search of business opportunities must do some serious research before entering a new market. They must evaluate and accept the reality of working in a different sovereign nation, and the rules in place there. The regulatory community cannot and should not take responsibility for that indispensable homework. The reality is a regulatory world with subtle and not-so-subtle differences that correspond to the reality of differences in the marketplaces themselves. The regulators should not be expected to provide cover.

When considering the summary of the stakeholders' perspectives (section 7.2), we emphasise these points:

- OTC derivatives reporting. It may be irksome that the requirements do not easily follow from one jurisdiction to another, complicating compliance, but market participants have to accept that their creation and use of such instruments was a key source of the crises which unfolded as from 2007. They do have the choice of using exchange-traded derivatives to increase or hedge exposures to market risks, with the advantage of simpler reporting. It must also be stated that from the G20 summit in 2009 onwards, legislatures and regulators have been put to a great deal of trouble to continue to accommodate OTC derivatives while attempting to integrate them into the public markets. That integration continues to run its course.

- Inconsistent approaches to exchange trading hours and settlement practices. Over the past 15 years, exchanges have tried to accommodate market demand by extending trading hours, but the response of the market was poor; evening trading for securities was a costly flop for intermediaries and exchanges alike. The only asset class that appeared to transcend usual business hours continues to be a few derivatives contracts unrelated to any one security. Attempts to make trading hours more consistent did not generate a response from the market, so this remark seems odd.

  Differences in settlement of trades occur for very different reasons. National payment systems themselves vary, as do the responsibilities for settlement of trades amongst central banks, commercial banks, custody and payment banks, and central securities depositories. All has arisen in local circumstances; much of what works in practice is not clearly defined in national law, much less harmonised. Moreover, settlement with one or both legs of a trade in foreign currency in a world of transactions occurring across 20+ time zones requires more time to match and prepare than a domestic-domestic bargain. For participants endeavouring to create a world of global trading, this point should have been well understood. For central bankers supervising national payment systems, in our view they should give due consideration to the foreign exchange question; too often we hear the reflex affirmation that settlement two days after a trade (T+2) is invariably the safest way to proceed. That is not necessarily right. Too tight a schedule leads to errors.

- Differences in accounting standards. This firm has been a supporter of a single global standard as a necessity for financial information, and has worked with managers at IFRS in support of their project. Multiple financial languages cause needless confusion. That is an expense to the market, and an advantage to the select few with the resources to reconcile various standards. We are aware of the massive difficulties of harmonization, including law and most especially tax matters – but to attempt to proceed with cross-border investment and market supervision without a common accounting standard seems to us a far more daunting prospect, and the wrong one to be facing.

As regards section 8 of the paper on preliminary suggestions, the firm of Thomas Murray would strongly endorse:

- IOSCO's enhancing international dialogue. This work plays to its strengths, and in this regard the organisation is irreplaceable. We particularly applaud its growing coordination with such global banking instances as the Basel Committee and the Committee on Payments and Market Infrastructures, without which its work would be far less effective.

- The IOSCO general secretariat becoming the central hub for regulators to share information. This suggestion would enhance the general secretariat's growing work in capital markets research, and be a complement to it. This is a role that no other organisation can credibly play. A major problem for all actors in 2007-2009 was standardised, high quality information on the capital markets and banks.

- A continued development of IOSCO's role as a forum for regulators is another must-do. As a firm, we work occasionally with the secretariat, and certainly use its papers and guidance; when in the field, we see how messages between Madrid and its members get diluted or lost altogether. Not only will the forum role accelerate the information flow amongst regulators around the world, the meeting place is indispensable for building trust in an environment where the authorities need to know one another more and better. The act of meeting and interchanging thoughts and data will refine the information exchange.

- We would agree that technical assistance would be a useful additional tool for the regulatory community, but it should perhaps not be a first priority. If IOSCO goes forward on the first three points, that would constitute considerable development for the limited human and capital resources at hand. There is the further matter that the secretariat might find itself rapidly caught up in national details and comparisons where instead legal counsel or the two regulators in question might best handle the inquiry.

- The last several possibilities put forward in section 8 – informative guidance on cross-border regulatory tools, guidelines for assessing foreign regulatory regimes, and increasing granularity of standards - seem problematic. The more detailed the guidance or the effort somehow to make principles more granular runs the risk of causing divisions amongst member commissions which need the flexibility in their jurisdictions to advance in the direction of broad principles, each in its own fashion.

It would seem to us that IOSCO will work best when maintaining the highest possible common denominator for its work such that its members can all identify with the group's work. In our view, the association should rarely if ever be put in a position of assessing members' regulatory regimes: if an IOSCO member finds itself or is thought to be subpar, the reforms would best achieved by market pressures being applied to local legislatures and commissions. We do not see how IOSCO would comfortably or effectively be judge and jury for the world's national commissions.

In the sense of applying more subtle pressure to keep members advancing, IOSCO's constant upgrading of its communications efforts is eminently purposeful – the more the world's capital markets professionals are familiar with its work, the greater the pressure to meet the higher standards required by a financial system that seems constantly to test the boundaries of acceptable practice.

IOSCO should most certainly stay out of disputes between its member securities commissions. It will continue to succeed when assuring that information is shared, and its members understand well the purposes of commonly agreed principles.

Conclusion

Post-2008, for readily understandable reasons on the part of politicians and regulatory agencies, many laws were promulgated, regulations written, and global principles agreed. It is hardly surprising that the resulting patchwork leads to confusion, higher costs and uncertainty as to outcomes, and most importantly does not necessarily result in less risk in the system.

Given this recent history, IOSCO's establishment of this task force is to be saluted. We hope these few comments will help as its work goes forward.

We remain respectfully yours for questions you may have,

Sincerely,

Thomas Krantz — Senior Advisor Capital Markets

Alex Harborne — Senior Analyst

CC: Simon Thomas, Tim Reucroft, Jim Micklethwaite, Janet Wynn, TM